

# **SDMS US EPA REGION V -1**

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March 6, 1990

### BY TELECOPY

Paul E. Takacs, Project Manager  
Illinois Environmental Protection Agency  
P. O. Box 19276  
Springfield, Illinois 62794-9276

Re: Sauget Sites (Areas I and II)  
L1630200005 -- St. Clair County

Dear Paul:

It was a pleasure talking to you today.

We represent Empire Chem, Inc. ("Empire Chem"), a Nevada corporation, in the above-referenced matter. The Midwest Rubber Reclaiming Division of Empire Chem (the "Division") operates a rubber reclaiming facility in Sauget, Illinois (the "Facility") which Empire Chem purchased in 1986 from a wholly distinct entity, Midwest Rubber Reclaiming Company, ("Midwest Rubber"), formerly a Delaware corporation.

You have notified me and the Division of meetings to be held on March 22 and 23 in Springfield, Illinois to discuss the preparation of a remedial investigation and a feasibility study ("RI/FS") for the so-called Sauget Sites. By this letter I provide information regarding the successors to Midwest Rubber, who we believe are potentially liable for remediation of certain Sauget Sites and who therefore should receive notice of and an opportunity to attend those meetings. Supporting documents are attached and are referenced herein as exhibits.

Paul E. Takacs  
March 6, 1990  
Page 2

Sale of Certain Assets from Midwest Rubber to Empire Chem

On September 29, 1986 Empire Chem<sup>1/</sup> purchased certain assets of Midwest Rubber and of a related corporation (Hoover Hanes Rubber Corporation) for \$12,241,000. At that time (and until the time of its dissolution), Midwest Rubber was wholly owned by GIT Industries, Inc., a Delaware corporation ("GIT"). (See Exhibit A.) We understand that discharges from the Facility to Dead Creek Area B, if any, had ceased prior to that purchase. Similarly, we understand that the pits and lagoons at the treatment plant referred to as "Site O" for RI/FS purposes had been closed and capped prior to that purchase. Therefore, any waste contribution to those sites from the Facility apparently would have occurred while the Facility was owned by Midwest Rubber, not by Empire Chem.

Transfer of Midwest Rubber Assets to GIT's Shareholders

On or before November 7, 1986, Midwest Rubber transferred to GIT all of its interest in the promissory note it received from the above sale, and on November 7, 1986, GIT transferred all of its interest in that note to its three stockholders, Richard M. Cohen, Morris Weissman, and Stanley Kreitman. (Exhibit A.) On December 30, 1986, both Midwest Rubber and GIT were dissolved. (Exhibits B and C, attached.)

We have no direct knowledge of where the assets of Midwest and GIT were transferred upon their dissolution. However, we have received a letter referring to the GIT Liquidating Trust, whose beneficiaries are described as Messrs. Cohen, Weissman, and Kreitman, "as the former shareholders of GIT Industries, Inc., a dissolved corporation". (Exhibit D.)

Knowledge of the Sauget Sites Matter

It seems clear that, before the 1986 sale of assets, Midwest Rubber and GIT were aware of the alleged contamination at and its potential liability arising from the Sauget Sites. As you probably know, the Illinois Environmental Protection Agency ("IEPA") responded to contamination at Dead Creek as early as 1980 by fencing off areas that had smoldered. IEPA added Dead Creek to the State Remedial Action Priorities List in July 1984.

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<sup>1/</sup> At the time of the transaction, Empire Chem was named MBS Chem, Inc.; its name later was changed to Empire Chem on March 25, 1987.

Paul E. Takacs  
March 6, 1990  
Page 3

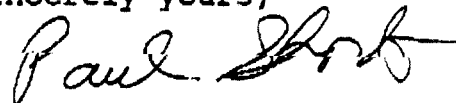
IPEA also began an investigation that by 1985 had expanded to include 15 other areas. In early 1986, members of the Village of Monsanto Sanitary Development and Research Association, including Midwest Rubber, had several rounds of discussions regarding remediation of sludges remaining in the treatment plant referred to as Site O.

As you also probably know, by mid-1986 the basic liability principles under the Comprehensive Environmental Response, Compensation, and liability Act of 1980 ("CERCLA", or "Superfund") and many analogous state statutes were relatively clear. Therefore it seems clear that the shareholders of GIT dissolved Midwest Rubber and GIT with actual knowledge of the potential liability of Midwest Rubber for investigation and remediation of at least some of the Sauget Sites. Under the law of many states, those who thus strip the assets of a corporation without making provision for known liabilities of the corporation can be held accountable for those liabilities.

Therefore we believe that the GIT Liquidation Trust or its three beneficiaries or both are potentially liable for investigation and remediation of at least some of the Sauget Sites. Therefore we believe that those parties should receive notice of the March 22 and 23 meetings, so that they have an opportunity to attend and to participate in settlement negotiations so as to minimize this potential liability. Addresses that may be appropriate for providing such notice are on Exhibits A, B, and D.

Please contact me with any comments or questions.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Paul Shorb".

Paul Shorb

PS/sp  
Enclosure  
0274\0688\LTR\0688PES.02

EXHIBIT A

MIDWEST RUBBER RECLAIMING COMPANY  
345 Hudson Street  
New York, New York 10014  
(212) 741-8500

As of November 7, 1986

MBS Chem, Inc.  
300 Plaza Drive  
Binghamton, New York 13904

Attention: Michael W. Katz, Vice President

Dear Mr. Katz:

Midwest Rubber Reclaiming Company, a Delaware corporation ("Midwest"), as the original payee of the \$300,000 promissory note, dated September 29, 1986 (the "Note") of MBS Chem, Inc., a Nevada corporation ("MBS"), hereby advises you that Midwest has transferred all of its interest in the Note to its sole stockholder, GIT Industries, Inc., a Delaware corporation ("GIT"). GIT hereby advises you that, effective November 7, 1986, it has transferred all of its interest in the Note to the stockholders of GIT. GIT hereby requests, pursuant to the terms of the Note, that MBS execute new notes payable to the stockholders of GIT listed below in the principal amount set forth opposite their respective names:

<u>Stockholder</u>	<u>Address</u>	<u>Principal Amount</u>
Richard M. Cohen	601 North Faring Road Los Angeles, California 90077	\$240,000
Morris Weissman	345 Hudson Street New York, New York 10014	\$ 57,000
Stanley Kreitman	345 Hudson Street New York, New York 10014	\$ 3,000
		<u>\$300,000</u>

Very truly yours,

MIDWEST RUBBER RECLAIMING COMPANY

By:   
Morris Weissman, President

GIT INDUSTRIES, INC.

By:   
Morris Weissman, President

# State of Delaware



## Office of Secretary of State

I, MICHAEL HARKINS, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF DISSOLUTION, STOCK CORPORATION OF MIDWEST RUBBER RECLAIMING COMPANY FILED IN THIS OFFICE ON THE THIRTIETH DAY OF DECEMBER, A.D. 1990, AT 9 O'CLOCK A.M.

1 1 1 1 1 1 1 1 1



989004910

*Michael Harkins*  
Michael Harkins, Secretary of State

AUTHENTICATION: 12478627

DATE: 01/04/1998

CERTIFICATE OF OFFICERS

OF

MIDWEST RUBBER RECLAIMING COMPANY

The undersigned, being the Secretary of Midwest Rubber Reclaiming Company (the "Corporation"), does hereby certify that the following are the names and residences of the directors and officers of the Corporation:

Directors

Names

Richard M. Cohen

Stanley Kreitman

Morris Weissman

Residences

601 North Faring Road  
Los Angeles, CA 90077

4 Chestnut Drive  
East Hills, N.Y. 11576

14 East 75th Street  
New York, N.Y. 10021

Officers

Titles

Chairman

President

Executive Vice President

Secretary

Treasurer and Assistant  
Secretary

Names

Richard M. Cohen

Morris Weissman

John T. Gorman

Howard Topol Roberts

Sheldon Cantor

Residences

601 North Faring Road  
Los Angeles, CA 90077

14 East 75th Street  
New York, N.Y. 10021

11 Jeffrey Lane  
East Windsor, NJ 08520

126 East 24th Street  
New York, N.Y. 10010

26 Green Hills Road  
East Brunswick, NJ 08841

Signed on December 10, 1986

*Howard Topol Roberts*  
Howard Topol Roberts, Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.

Howard Topol Polner, being duly sworn, deposes and says that he is the Secretary of Midwest Paper Producing Company and that the foregoing notice of dissolution has been signed by the sole stockholder of said corporation.

*Howard Topol Polner*  
Howard Topol Polner, Secretary

Subscribed and sworn to before me on December 11, 1986.

Notary Public



866336154

WRITTEN CONSENT TO

DISSOLUTION

OF

MIDWEST RUBBER PRELIMING COMPANY

FILED  
9PM

DEC 20 1986

*[Signature]*  
DEC 20 1986

The undersigned, being the sole stockholder of Midwest Rubber Preliming Company (the "Corporation"), does hereby consent by this writing to the dissolution of the Corporation.

The effective time of the dissolution herein authorized, and the time at which the dissolution of the Corporation shall become effective, shall be the date of the filing of this written consent.

Signed on December 1, 1986.

GIT INDUSTRIES, INC.

BY: *[Signature]*  
Morris Weisman, President

NOTES:

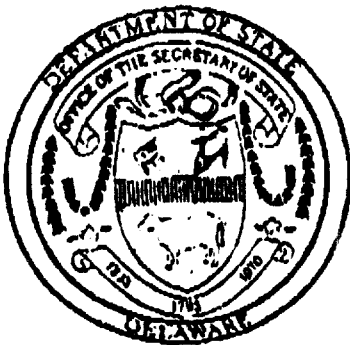
*[Signature]*  
Howard Tejori Roberts, Secretary



# State of DELAWARE

## Office of SECRETARY OF STATE

I, Michael Harkins, Secretary of State of the State of Delaware,  
do hereby certify that the attached is a true and correct copy of  
Certificate of Dissolution \_\_\_\_\_  
filed in this office on December 30, 1986 \_\_\_\_\_



Michael Harkins  
Michael Harkins, Secretary of State

BY: Balcer

DATE: January 3, 1990

866364353

WRITTEN CONSENT TO

DISSOLUTION

OF

GIT INDUSTRIES, INC.

FILED

DEC 30 1986

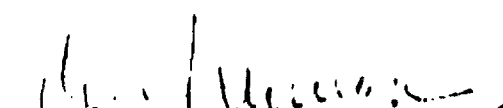
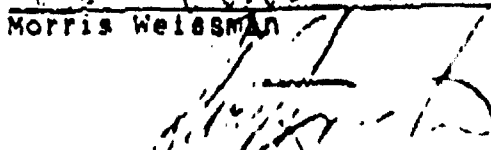
9/1/87

  
DIRECTOR OF CORP.

The undersigned, being all of the stockholders of GIT INDUSTRIES, INC. (the "Corporation"), do hereby consent by this writing to the dissolution of the Corporation.

The effective time of the dissolution herein authorized, and the time at which the dissolution of the Corporation shall become effective, shall be the date of the filing of this Written Consent.

Signed on December 10, 1986.

  
Richard M. Cohen  
Morris Weissman  
Stanley Krellman

Subscribed and sworn to before  
me, on December 17, 1986.

Notary Public

Howard Topol Roberts, Secretary

Howard Topol Roberts, being duly sworn, deposes and says  
that he is the Secretary of CIT Industries, Inc.  
and that the foregoing written consent to dissolution  
has been signed by all of the stockholders of said corporation.

STATE OF NEW YORK )  
COUNTY OF NEW YORK )  
SS.

CERTIFICATE OF OFFICER

OF

GIT INDUSTRIES, INC.

The undersigned, being the Secretary of GIT INDUSTRIES, INC. (the "Corporation"), does hereby certify that the following are the names and residences of the directors and officers of the Corporation:

Directors

Names

Richard M. Cohen

Stanley Kraitman

Morris Weissman

Residences

601 North Faring Road  
Los Angeles, CA 90077

4 Chestnut Drive  
East Hills, N.Y. 11576

14 East 75th Street  
New York, N.Y. 10021

Officers

Names

Richard M. Cohen

Stanley Kraitman

Morris Weissman

John T. Gorman

Howard Topol Roberts

Sheldon Cantor

Residences

601 North Faring Road  
Los Angeles, CA 90077

4 Chestnut Drive  
East Hills, N.Y. 11576

14 East 75th Street  
New York, N.Y., 10021

11 Jeffrey Lane  
East Windsor, N.J. 0852

126 East 24th Street  
New York, N.Y. 10010

26 Green Hills Road  
East Brunswick, N.J. 08816

Titles

Chairman

Vice Chairman

President

Executive Vice President

Secretary

Treasurer and Assistant  
Secretary

Signed on December 10, 1986

*Howard Topol Roberts*  
Howard Topol Roberts, Secretary

EXHIBIT D

NOV 29 1989

GIT LIQUIDATING TRUST  
c/o Morris Weissman  
345 Hudson Street  
New York, New York 10014

November 16, 1989

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

MBS Chem, Inc.  
c/o Empire Chem, Inc.  
300 Plaza Drive  
Binghamton, NY 13903  
Attention: Burton I. Koffman  
William Whittaker

Re: Laskin/Poplar Oil Superfund Site

Dear Sirs:

This letter is being written by the GIT Liquidating Trust, the beneficiaries of which are Richard M. Cohen, Morris Weissman and Stanley Kreitman, as the former shareholders of GIT Industries, Inc., a dissolved corporation.

Please be advised that we are in receipt of the enclosed summons and complaint in United States v. ABS Industries, et al., which names as a defendant Midwest Rubber Reclaiming Co. n/k/a Empire Chem, Inc. We hereby forward these papers to you, as the named defendant and current owner of the facility.

In the course of our investigation into this matter, we have learned that a joint defense group, comprised of defendants who contributed only petroleum and petroleum-based products to the Laskin/Poplar Oil Superfund Site (the "Site") is being represented by the firm of Squire, Sanders & Dempsey, in Cleveland, Ohio. Charles McElwee, of Squire, Sanders & Dempsey, has indicated that the group would permit Empire Chem, Inc. to participate in the group, if it so desires. We recommend you consider joining with this group. Mr. McElwee can be reached at (216) 687-8732. We are enclosing, for your information, a copy of the Joint Representation Agreement, which you will be required

to execute should you choose to participate. In addition, Squire, Sanders & Dempsey will require that you waive any claim of conflict of interest which you might have with any Squire, Sanders & Dempsey clients, and provide an affidavit attesting to the fact that Midwest Rubber Reclaiming Company contributed only petroleum and petroleum-based products to the Site. We are also enclosing, for your convenience, a draft affidavit which speaks to the use of petroleum products at the facility prior to your ownership. Should you wish, we will arrange for its execution.

By order of the Court, your time to answer the complaint in this action has been extended to December 3, 1989. You should, therefore, contact Squire, Sanders & Dempsey immediately, or otherwise retain counsel, so that an answer may be filed on your behalf by that date.

Should you have any questions, please contact me.

Sincerely,

GIA Liquidation, Trust

By:   
Morris Weissman, a Trustee

cc: Beveridge & Diamond, P.C.  
1333 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
Attention: Albert J. Beveridge, III